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11 UNITED STATES BANKRUPTCY COURT  
12 EASTERN DISTRICT OF CALIFORNIA

13 In re ) Case No. 09-26364-C-7  
14 ) Chapter 7  
15 EURO SURFACES, INC., )  
16 ) DC No. SF-4  
17 Debtor. )  
18 ) MOTION TO REJECT LEASE  
19 ) OF NONRESIDENTIAL REAL  
20 ) PROPERTY AND FOR  
21 ) AUTHORIZATION TO PAY  
22 ) LANDLORD ADMINISTRATIVE  
23 ) RENT CLAIM

24 Date: May 6, 2009  
25 Time: 9:30 am  
26 Dept.: C; Courtroom 35  
Hon. Christopher M. Klein  
US Bankruptcy Court  
501 - I Street, 6<sup>th</sup> Floor  
Sacramento, California)

1 Gary R. Farrar, the Chapter 7 trustee ("Trustee") of  
2 the bankruptcy estate of Euro Surfaces, Inc. (the "Debtor"),  
3 hereby applies to the Court for an order authorizing the  
4 Trustee to reject the Debtor's lease of non-residential real  
5 property, effective as of the close of business on May 15,  
6 2009, for the Debtor's premises located at and commonly known  
7 as 25176 Schulte Road, Tracy, California (the "Premises").

8 Trustee also seeks authority from the Court to pay a  
9 postpetition administrative rent claim owed to the Premises  
10 landlord through the effective date of the lease rejection, in  
11 a stipulated amount of \$10,000.

12 In support of the motion, Trustee represents the  
13 following:

14 1. The Debtor filed a voluntary Chapter 7 petition  
15 on April 6, 2009. Gary R. Farrar is the duly appointed interim  
16 Chapter 7 trustee.

17 2. Prior to filing bankruptcy, the Debtor operated a  
18 kitchen slab installation business over a 15-year period from  
19 1994 to April 2009. [See Declaration of Gary R. Farrar in  
20 Support of Motion to Reject Lease filed herewith (the "Farrar  
21 Declaration"), Par. 3]. The Debtor had gross revenues from its  
22 business of \$7.2 million in calendar year 2008, and \$7.5  
23 million in calendar year 2007. [Id.].

24 3. The Debtor operated its business from the  
25 Premises pursuant to a lease agreement dated August 13, 2004  
26 (the "Lease"), with ProLogis North American Properties Fund I  
LLC, a Delaware limited liability company ("ProLogis" or the

"Landlord"). [See Lease, Exhibit A to Farrar Declaration].

Under the Lease, and the first amendment to the Lease, as of December 1, 2008, the monthly Premises' rent was \$20,642. In addition, under the Lease documents, the Debtor was responsible for common area maintenance charges, taxes, insurance, and management fees of an additional \$5,331. Hence, the total monthly amount owed by the Debtor to the Landlord was at least \$25,973. [Id.].

4. On or about March 25, 2009, the Landlord issued to the Debtor a Three-Day Notice to Pay or Surrender Possession of the Premises (the "Notice"). [See Three-Day Notice, Exhibit B to Farrar Declaration]. The Notice stated that the Debtor owed the past-due rental amount of \$27,278.66.

5. At the time of the petition, substantial personal property owned by the Debtor, including machinery and equipment used in cutting and polishing kitchen slabs, remained at the Premises (the "Personal Property"). [Farrar Declaration, Par. 6]. Trustee believes that the Personal Property is entirely encumbered by various security interests and that there is little, if any, equity in the Personal Property for the bankruptcy estate. In particular, Butler Johnson Corporation ("BJC"), which is owed in excess of \$200,000, appears to hold a blanket security interest in all of the Debtor's Personal Property. [Id.; see generally, Motion to Abandon Personal Property, DC No. SF-5].

6. Trustee is in the process of abandoning the Personal Property. In connection with the abandonment, BJC is

1 agreeable to paying an administrative claim associated with  
2 post-petition rent accruals through May 15, 2009, the date  
3 rejection is sought, in an amount not to exceed \$10,000 (the  
4 "Rejection Payment"). In addition, in order to reimburse the  
5 estate for its administrative expenses and provide a benefit to  
6 creditors, BJC is further agreeable to paying the bankruptcy  
7 estate the sum of \$15,000 (the "Administrative Payment").

8 7. In order to effect these arrangements, BJC will  
9 therefore pay the bankruptcy estate the sum of \$25,000  
10 representing the Rejection Payment and the Administrative  
11 Payment by no later than May 15, 2009. [Farrar Declaration,  
12 Par. 8].

13 8. Upon the effective date of the Lease rejection,  
14 Trustee shall turn over and restore possession of the Premises  
15 to the Landlord.

16 9. Section 365(a) of the Bankruptcy Code provides  
17 that a trustee, subject to Court approval, may assume or reject  
18 any executory contract.

19 10. To the extent that the Lease remains executory,<sup>1</sup>  
20 Trustee believes that the rejection of the Lease is in the best  
21 interests of the estate.

22 11. More particularly, the Lease itself does not  
23 have value to the estate. [Farrar Declaration, Par. 11]. In  
24 that regard, Trustee notes that the downturn in the economy has  
25 resulted in numerous vacancies, and that there is substantial

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26 <sup>1</sup> In light of the 3-Day Notice, there is an argument that the lease terminated prepetition even if the Trustee remains in possession of the Premises.

1 similar warehouse space located in the immediate vicinity of  
2 the Premises. [Id.]. Trustee also notes that the monthly rent  
3 under the Lease is above market and, indeed, prepetition the  
4 Landlord had proposed rent concessions to the Debtor. Even if  
5 assignment of the Lease were a possibility, it is extremely  
6 unlikely that the Trustee could effect a cure of the prior  
7 arrearages and provide adequate assurances of future  
8 performance. [Id.].

9 12. The Lease rejection is also in the best  
10 interests of creditors in that it will promote an orderly  
11 liquidation of the Debtor's assets. The postpetition  
12 administrative rent will be shouldered by a third party, BJC,  
13 the Landlord will have certainty concerning the Premises lease,  
14 and the estate will realize funds of \$15,000.

15 13. Significantly, as previously noted, the Trustee  
16 is seeking to abandon the Personal Property. The abandonment,  
17 if granted, will enable BJC to sell the Personal Property at  
18 the Premises through the rejection date which, in turn, will  
19 maximize the return to BJC and reduce its outstanding  
20 indebtedness. The reduction in BJC's debt, in turn, will  
21 increase what might be available to general creditors through  
22 the liquidation of other personal property owned by the Debtor,  
23 consisting of vehicles, to which BJC's security interest did  
24 not attach and/or was not otherwise perfected.

#### 25 PAYMENT OF ADMINISTRATIVE RENT CLAIM


26 14. By this motion, Trustee is also seeking  
authority to pay the Rejection Payment to the Landlord promptly

1 upon its payment to the Trustee by BJC. The payment of the  
2 Rejection Payment to the Landlord without further application  
3 to the Court is one of the incentives to the Landlord in  
4 agreeing to the proposed arrangements, including an  
5 administrative payment less than the amount of the Lease rental  
6 rate. [Farrar Declaration, Par. 14].

7 WHEREFORE, Trustee respectfully requests that the  
8 Court grant the motion and that the Trustee be authorized to  
9 reject the Lease effective as of May 15, 2009. Trustee further  
10 requests that the Court approve an administrative claim of  
11 \$10,000 in favor of the Landlord, and that the Court authorize  
12 the Trustee to pay the Rejection Claim promptly upon receipt of  
13 available funds.

14 Dated: April 24, 2009

15 SUNTAG & FEUERSTEIN  
16 A Professional Corporation

17 By:   
18 Abram S. Feuerstein  
19 Attorneys for  
20 Gary R. Farrar, Trustee  
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